

## **SETTLEMENT AGREEMENT**

This AGREEMENT TO SETTLE AND RELEASE OF CLAIMS (the “Agreement”) is made and entered by and among North Carolina Department of Environmental Quality (“DEQ”) and Duke Energy Carolinas, LLC (“Duke Energy”). DEQ and Duke Energy (collectively, the “Parties”) agree to the following terms as a basis upon which to resolve the issues between them relating to the releases and alleged releases of coal ash from the 48-inch and 36-inch storm water pipes at Duke Energy’s Dan River Steam Station (the “Dan River Plant”), any other alleged unpermitted discharges at the Dan River Plant, and any and all alleged effects on water quality therefrom. By this Agreement, the undersigned settling Parties mutually agree to compromise, settle, and forgo all current, prior, and future claims related to the 2014 Dan River NOV, the Dan River Penalty Assessment, and the 2016 Dan River NOV (each as defined herein), subject to the terms and conditions set forth below.

### **I. RECITALS**

WHEREAS, Duke Energy owns and operates the Dan River Plant, located in Rockingham County, North Carolina;

WHEREAS, the Dan River Plant formerly produced electricity through coal combustion;

WHEREAS, on January 31, 2013, Duke Energy was issued NPDES Permit No. NC0003468, effective March 1, 2013, for operation of an existing wastewater treatment works at the Dan River Plant and for discharging treated wastewater into the Dan River;

WHEREAS, soon after the Dan River Plant was constructed, two pipes (the “48-Inch Pipe” and the “36-Inch Pipe”) were installed to carry storm water runoff from various areas of the Dan River Plant property to the Dan River;

WHEREAS, on February 28, 2014, DEQ sent Duke Energy a Notice of Violation (the “2014 Dan River NOV”) based upon the following alleged violations at the Dan River Plant: (1) allowing unpermitted discharges of waste water via the 48-Inch Pipe and the 36-Inch Pipe; (2) failing to properly operate and maintain the coal ash pond; (3) failing to take reasonable steps to prevent a discharge that had a reasonable likelihood of affecting human health or the environment; and (4) violating water quality standards;

WHEREAS, on February 8, 2016, DEQ assessed a \$6.8 million civil penalty (the “Dan River Penalty Assessment”) against Duke Energy based upon alleged violations as described in the 2014 Dan River NOV;

WHEREAS, on March 4, 2016, DEQ sent Duke Energy a Notice of Violation (the “2016 Dan River NOV”) alleging certain unauthorized discharges of wastewater (commonly referred to as “seeps”) from the area around the Dan River Plant’s coal ash surface impoundments;

WHEREAS, the volume of the unauthorized discharges addressed by the 2016 Dan River NOV is low compared to the volume of permitted waste water discharges from the Dan River Plant;

WHEREAS, on March 10, 2016, Duke Energy filed a Petition for Contested Case at the North Carolina Office of Administrative Hearings, challenging the Dan River Penalty Assessment on both legal and factual grounds (the “Dan River Petition”);

WHEREAS, on April 11, 2016, DEQ filed its Prehearing Statement and Document Constituting Agency Action (the “DEQ PHS”) and Duke Energy filed its Prehearing Statement (the “Duke Energy PHS”);

WHEREAS, the Parties have engaged in extensive discovery regarding the arguments raised in the Dan River Petition, the DEQ PHS and the Duke Energy PHS; and

WHEREAS, DEQ and Duke Energy have determined that it is in the best interest of the Parties, the environment, and the citizens of North Carolina, that they enter into a compromise settlement to avoid the time and expense of prolonged litigation so that the Parties may direct efforts towards the implementation and execution of the mandates of the North Carolina Coal Ash Management Act and allow Duke Energy to focus on plans to safely close all of its North Carolina ash basins.

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DEQ and Duke Energy agree to compromise, settle, and dismiss with prejudice all claims and causes of action related to the matters raised by the 2014 Dan River NOV, the 2016 Dan River NOV, and the Dan River Penalty Assessment upon fulfillment of the terms and conditions set forth below:

## **II. DUKE ENERGY'S OBLIGATIONS**

A. Petitioner agrees to pay to Respondent the sum of five million, nine hundred eighty three thousand, seven hundred fifty dollars (\$5,983,750.00) in full settlement of all current, prior, and future claims related to the matters raised in the 2014 Dan River NOV and/or the Dan River Penalty Assessment, whether currently known or unknown.

B. Petitioner agrees to pay to Respondent the sum of sixteen thousand, two hundred fifty dollars (\$16,250.00) in full settlement of all current, prior, and future claims related to the matters raised in the 2016 Dan River NOV, based upon Duke Energy's agreement to an up-front penalty in the amount of \$4,000.00 for each of 4 seeps identified on or before December 31, 2014 and \$250.00 for the 1 seep identified between January 1, 2015 and the date of this Agreement, the lesser penalty reflecting Duke Energy's submission and implementation of the

Plan for the Identification of New Discharges in accordance with the North Carolina Coal Ash Management Act.

C. The sums set forth in parts II.A and II.B shall collectively be referred to as the "Payment." The Payment shall be made by check and made payable to the North Carolina Department of Environmental Quality and delivered to the following address:

North Carolina Department of Environmental Quality  
Sam M. Hayes  
217 West Jones Street  
Raleigh, North Carolina 27603

The Payment shall be made within thirty (30) days of the receipt by Duke Energy of the acknowledgment described in part III.A. below.

D. Within fifteen (15) days of the receipt by Duke Energy of the acknowledgment described in part III.A. below, Duke Energy shall file and serve a Voluntary Withdrawal with Prejudice of the Dan River Petition, Case No. 16-EHR-02477.

E. Duke Energy shall not make any public statement regarding this Agreement without obtaining prior consent from DEQ as to the content of that statement.

### **III. DEQ'S OBLIGATIONS**

A. Within five (5) days of the execution of this Agreement, DEQ shall communicate to Duke Energy, in writing, its withdrawal and rescission, with prejudice, of the 2014 Dan River NOV, the 2016 Dan River NOV, and the Dan River Penalty Assessment.

B. DEQ shall not issue any further Notices of Violation, Notices of Regulatory Requirements, other similar notices, unilateral orders or civil penalty assessments to, file any judicial action against, or take any administrative, regulatory, or other enforcement actions against Duke Energy based on or in any way related to any previous or future impacts of the

matters referred to in the 2014 Dan River NOV, the 2016 Dan River NOV, or the Dan River Penalty Assessment.

C. DEQ shall not make any public statement regarding this Agreement without obtaining prior consent from Duke Energy as to the content of that statement.

#### IV. LEGAL PROVISIONS

A. Binding Nature of Agreement. The Parties represent and agree that the persons executing this Agreement have full and sufficient authority to sign and agree to be bound by the Agreement, and that this Agreement shall be binding upon DEQ and Duke Energy, and their successors and assigns, upon its execution by all parties.

B. No Admissions. By entering into this Agreement, the Parties make no admission of liability, violation, or wrongdoing whatsoever, by themselves, any of their affiliates, or any of their present or former officers, directors, employees, or agents, and this Agreement may not be offered into evidence in any action or proceeding for any purpose other than as may be expressly provided in this Agreement. Specifically, the payment of \$5,983,750.00 in settlement of the 2014 NOV and Dan River Penalty Assessment is not an admission that DEQ properly calculated the Dan River Penalty Assessment or had adequate factual and/or legal grounds therefor.

C. Attorney's Fees, Costs, and Expenses. The Parties agree to bear their own respective attorney's fees, costs, and other expenses that have been incurred in connection with any stage of the state enforcement actions or Duke Energy's Petition for Contested Case related to the Dan River Penalty Assessment.

D. Governing Law and Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of North Carolina without regard to the

conflict-of-law provisions of North Carolina or any other state, and any provision herein that violates a statute or rule shall be void and unenforceable.

E. Enforceability and Remedies for Breach. The Parties stipulate and agree that this Agreement may be enforced in any court of competent jurisdiction in North Carolina, and that venue is appropriate in either Wake or Mecklenburg County. The Parties' sole and exclusive remedy for breach of this Agreement shall be an action for specific performance or injunction. In no event shall any Party be entitled to monetary damages for breach of this Agreement. In addition, no legal action for specific performance or injunction shall be brought or maintained until: (a) the non-breaching Party provides written notice to the allegedly breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the allegedly breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the allegedly breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently completes the activities reasonably necessary to remedy the claimed breach. This Agreement may be introduced as evidence in any action involving either or both Parties for the purpose of implementing its terms.

F. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision; the invalid or unenforceable provision shall be stricken, without assessing damages or imposing penalties to either Party arising out of said provisions by any court of competent jurisdiction.

G. Headings. The headings used in this Agreement are for convenience of reference only and shall in no way define, limit, expand or otherwise affect the meaning of any provision of this Agreement.

H. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

I. Amendment. This Agreement may not be modified, altered or changed except in a written document that is signed by all Parties and that makes specific reference to this Agreement.

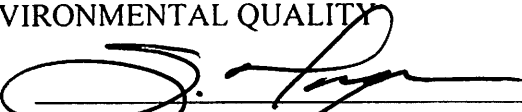
J. Entire Agreement. This Agreement sets forth the entire agreement between the Parties, and fully supersedes any prior agreements or understandings between the Parties related to the subject matter of this Agreement, including but not limited to the matters raised in the 2014 Dan River NOV, the Dan River Penalty Assessment, and the 2016 Dan River NOV.

K. Review and Signing. Each Party and counsel for each Party has reviewed this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction requiring resolution of ambiguities against the drafting Party.

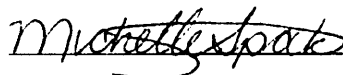
[Signature page follows]

IN WITNESS WHEREOF, DEQ and Duke Energy, and their respective counsel have executed this Agreement as of September 23, 2016.

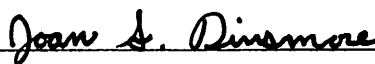
NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By:   
Its: General Counsel  
Date: 9/23/16

DUKE ENERGY CAROLINAS, LLC

By:   
Its: Associate General Counsel  
Date: 9/23/2016

McGUIREWOODS LLP

By:   
Date: 09/23/16